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The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Price Brothers Company

File: B-228524

Date: February 22, 1988

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### DIGEST

1. A sealed bid solicitation for an indefinite number of units with separate pricing for a first article unit is defective where bidders were encouraged to front load their first article prices in order to ensure recovery of their nonrecurring costs.
2. A solicitation should not permit an award to be made for a quantity of units different from that used for the evaluation of bids.

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### DECISION

Price Brothers Company protests award of a contract to any firm but itself under invitation for bids (IFB) No. F33657-87-B-0065 on the basis that the two lowest bids are materially unbalanced. Award has been stayed pending our decision. We conclude the IFB was defective and sustain the protest on that basis.

The IFB, issued by the Aeronautical Systems Division, Wright-Patterson Air Force Base, sought a quantity of Survivable Collective Protection Systems (SCPS-2) for use at two air bases in Korea. The SCPS-2 is a large underground shelter for the protection of Air Force personnel in a chemical warfare environment. The IFB called for line item prices for a first article with contractor testing; production unit prices for each of two varying requirements to be decided at award; spare parts; data; and warranty. Options were included for additional production units at both air bases, with the associated data and warranty. Under the first step of a two-step sealed bidding process, the Air Force received seven technical proposals, three of which were technically acceptable; the IFB was issued only to these three offerors: Price, BMY, and Brunswick Corporation.

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The IFB required bidders to submit separate unit prices on incremental quantities of the production units for the two air bases (for example, 10 to 25, 26 to 40, etc., for Kunsan AFB), and stated that bid evaluation would be based upon certain best estimated quantities (BEQ) for the production units to be delivered. Thus the low bidder would be that firm which submitted the low aggregate price based on the BEQ's for all line items. The solicitation further provided that the quantity of units to be awarded would be inserted at the time of award.

The prices for production unit line items were evaluated based on the incremental prices corresponding to the BEQ of 26 production units and 5 optional units at Osan Air Force Base and 32 production units and 6 optional units for Kunsan Air Force Base. BMY had the low bid at \$28,586,899 with a first article price of \$2,963,662, and an average production unit price of \$362,639. Brunswick was second low with an aggregate bid of \$30,919,672 with a first article price of \$2,399,505 and an average production unit price of \$420,165. The protester bid \$31,484,031, with a first article price of \$603,606 and an average production unit price of \$443,274.

A bid with a grossly front-loaded first article price is materially unbalanced, so as to require its rejection even if the bid is low overall. M.C. General, Inc., B-228334, Dec. 9, 1987, 87-2 CPD ¶ 572. The rationale for this rule is that award to a bidder submitting an unreasonably high first article price will provide funds to that bidder, tantamount to an advance payment, to which the bidder simply is not entitled if payment is to be measured on the basis of actual value received. Islip Transformer & Metal Co., Inc., B-225257, Mar. 23, 1987, 87-1 ¶ 327; Nebraska Aluminum Castings, Inc.--Reconsideration, B-222476.2, Sept. 23, 1986, 86-2 CPD ¶ 335.

Our prior cases that deal with the problem of first article front loading have involved procurements for definite quantities, where the bidders were in a position to amortize their costs over known requirements. Here, in contrast, the contract quantity is not known at the time of bidding. The solicitation provides that the quantities to be awarded will be inserted at the time of award. That is, the Air Force has the right under the solicitation to order relatively few units, many units, or some quantity in between. For the purpose of amortizing its costs, a bidder either must guess at the number of units that will be ordered or else simply include these costs in its first article price.

As a result, It appears that BMY and Brunswick front-loaded their first article prices in order to ensure recovery of their nonrecurring costs. While we recognize that the IFB

invited bids on incremental quantities to permit bidders to quote different unit prices for different quantity ranges, bidders still could not be sure that the Air Force would order more than the minimum number of units within the quantity range. For example, the Air Force could order as many as 25 units for Kunsan or as few as 10 at the same price per unit. Therefore, bidders could not be assured that they would recover their start up costs.

It is not reasonable to expect a bidder to amortize its costs over units that the government may or may not buy under the contract. On the other hand, we are of the view that it is not reasonable for the government to agree to pay almost \$3 million for a first article unit that costs only \$362,639 in production (exclusive of testing) merely because the government's requirements are indefinite at the time of bidding. The first article is simply an initial sample, identical to the production units, the sole purpose of which is to ensure that items conforming to the IFB's requirements will be furnished upon commencement of full production; the first article will be delivered as an end item indistinguishable from the production units. See M.C. General, Inc., B-228334, supra. Yet, the first article prices exceed the production unit price by more than \$2.6 million for BMY--a ratio of over 8 to 1--and \$1.9 million for Brunswick--a ratio of almost 6 to 1.

We have held that where, as here, an evaluation methodology in a solicitation is structured to encourage unbalanced bidding, the solicitation is defective and no bid can properly be evaluated because there is insufficient assurance that any award will result in the lowest cost to the government. T.L. James & Co., Inc., 64 Comp. Gen. 848 (1985), 85-2 CPD ¶ 696; Professional Carpet Service, B-220913, Feb. 13, 1986, 86-1 CPD ¶ 158.

In view of the foregoing, we sustain the protest.<sup>1/</sup>

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<sup>1/</sup>Price also raised issues regarding the choice of subcontractors, performance problems on the SCPS-2 contract in Europe, and Brunswick's compliance with certain requirements of the IFB. We need not consider these issues since we otherwise sustain the protest.

We also note that under this IFB, a bidder with the lowest evaluated price based on the BEQ's might not provide the lowest price based on the actual award quantities. An IFB is defective where the method for evaluating bids provides no assurance that an award to the lowest evaluated bidder will in fact result in the lowest cost to the government in terms of actual performance. Exclusive Temporaries of Georgia, Inc., B-220331.2, et al., Mar. 10, 1986, 86-1 CPD ¶ 232.

We recommend that step two of the solicitation be canceled and resolicited with an evaluation scheme stating that the evaluation will be based on the quantities to be awarded. Also, any resolicitation should provide specific guidance regarding the need to amortize costs over the life of the contract. If the Air Force cannot set forth in the IFB, a definite quantity of units to be ordered, the solicitation may provide that any costs in excess of the properly allocated costs of producing and testing the first article unit, which are included in the bidder's first article price, shall be paid at the completion of the contract.

*Milton J. Jordan*

Acting Comptroller General  
of the United States